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SCTM

Court File No.

T-1663-19

FEDERAL COURT

BETWEEN:

(Court Seal)

FEDERAL COURT		COUR FÉDÉRALE	
F	FILED	OCT 10 2019	DÉPOSÉ
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E	TORONTO, ON		
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CANADIAN BROADCASTING CORPORATION / SOCIÉTÉ
 RADIO-CANADA, JOHN PAUL TASKER
 and ROSEMARY BARTON

Applicants

and

CONSERVATIVE PARTY OF CANADA, CONSERVATIVE FUND
 CANADA, DUSTIN VAN VUGT and JOHN DOE

Respondents

Application under rule 300 of the *Federal Court Rules*, SOR/98-106 and
 section 34 of the *Copyright Act*, RSC 1985, c. C-42

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE
GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date OCT 10 2019 Issued by SHIRLEY AGORD
REGISTRY OFFICER
(Registry Officer)
AGENT DU GREFFE
Address of local office: 180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: **DENTONS LLP**
Toronto-Dominion Centre
77 King Street West, Suite 400
Toronto ON M5K 0A1

Matthew Diskin
Tel: 416-863-4391
matthewd@stockwoods.ca

Lawyers for the Respondents

APPLICATION

The Applicants make Application for:

1. A declaration that the respondents, Conservative Party of Canada, Conservative Fund Canada, Dustin Van Vugt and/or John Doe have engaged in the unauthorized use of copyright-protected material owned by the applicant, Canadian Broadcasting Corporation/Société Radio-Canada, in contravention of the *Copyright Act*, R.S.C. 1985, c. C-42, as amended;
2. A declaration that the respondents, Conservative Party of Canada, Conservative Fund Canada, Dustin Van Vugt and /or John Doe have violated the moral rights of the applicants, Rosemary Barton and John Paul Tasker, who are the authors and performers of the copyright-protected material;
3. An interim and interlocutory injunction restraining the respondents from publishing the Infringing Material (as defined below) or from further publishing otherwise disseminating any material that infringes on the applicants' copyright;
4. A permanent injunction restraining the respondents from publishing the Infringing Material (as defined below) and from further publishing or otherwise disseminating any material that infringes on the applicants' copyright;
5. The costs of this proceeding on a substantial indemnity scale; and
6. Such further and other relief as this Honourable Court deems just.

The grounds for the application are:

The Parties

7. The applicant, Canadian Broadcasting Corporation/Société Radio-Canada (“**CBC/Radio-Canada**”), is the Canadian national public broadcaster with the mandate specified in the *Broadcasting Act, 1991*, S.C. 1991, c. 11. Pursuant to that mandate, CBC/Radio-Canada delivers a wide range of programs that inform, enlighten and entertain and is a critical source of news and information throughout Canada.
8. The applicants, John Paul Tasker and Rosemary Barton, are journalists for CBC/Radio-Canada.
9. The Conservative Party of Canada (the “**Conservative Party**”) is a federal political party in Canada.
10. Dustin Van Vugt (“**Van Vugt**”) is the Executive Director of the Conservative Party.
11. The Conservative Fund Canada (the “**Conservative Fund**”) is a non-share capital corporation incorporated under the *Canada Corporations Act*, R.S.C. 1970, c. C-32. According to the Constitution of the Conservative Party, the Conservative Fund is the Chief Agent of the Conservative Party. It is also the Chief Agent of the Conservative Party registered with Elections Canada pursuant to the *Canada Elections Act*, S.C. 2000, c. 9.

12. The Conservative Party, on its own or through its agents, is responsible at law for all decisions made and actions taken in its name, including the impugned conduct described in this Application.
13. Further, or in the alternative, Van Vugt, as Executive Director of the Conservative Party, is responsible at law for all decisions made and actions taken in the name of the Conservative Party, including the impugned conduct described in this Application.
14. Further, or in the alternative, the Conservative Fund, as Chief Agent of the Conservative Party, is responsible at law for all decisions made and actions taken in the name of the Conservative Party, including the impugned conduct described in this Application.
15. Further or in the alternative, John Doe, an individual yet to be identified, is responsible at law for all decisions made and actions taken in the name of the Conservative Party, including the impugned conduct described in this Application.

Respondents use CBC Material on various websites

16. The Conservative Party operates a website found at <http://www.notasadvertised.ca> (“Not as Advertised Page”). The Not as Advertised Page indicates that it is “authorized by the Chief Agent of the Conservative Party of Canada”.

17. The Conservative Party operates a Facebook webpage under the name “Conservative Party of Canada – Parti Conservateur du Canada” and with the handle @cpcpcc (“**Facebook Page**”). The Facebook Page can be found at:

<https://www.facebook.com/cpcpcc/videos/2444207782492622/UzpfSTEyMDY5MzE3MTI5Nzc3NzoyOTcxODI5NTc5NTE3NDQx/>

18. The Conservative Party operates a YouTube webpage under the name “Conservative – Conservateur” (“**YouTube Page**”). The YouTube Page can be found at:

https://www.youtube.com/watch?time_continue=5&v=RGmosFbMJ08

19. On or about October 4, 2019, the Conservative Party published a 1:46 minute video titled “Look at What We’ve Done” on the Not as Advertised Page, the Facebook Page and the YouTube Page.

20. The “Look at What We’ve Done” video contains multiple excerpts taken from CBC/Radio-Canada programs (“**CBC Material**”). In particular:

(a) starting at or around 0:23, the video displays an excerpt from the “At Issue” segment from CBC’s *The National* program originally broadcast on December 20, 2017, in which the CBC host, Rosemary Barton, interviews panelist Andrew Coyne. CBC owns the copyright in this material;

- (b) starting at or around 0:27, the video displays two excerpts from a CBC Politics broadcast of a town hall event that Prime Minister Justin Trudeau attended on or about January 1, 2018, and originally broadcast live by CBC on that same date. The two excerpts have been cut and edited together in the “Look at What We’ve Done Video”, to make them appear as if they were a single continuous excerpt. CBC owns the copyright in this material;
- (c) starting at or around 0:57, the video displays an excerpt from CBC’s *Power & Politics* program originally broadcast on April 9, 2019 which includes commentary from CBC journalist John Paul Tasker. CBC owns the copyright in this material; and
- (d) starting at or around 1:02, the video displays an excerpt from the “Rex Murphy Point of View” segment from CBC’s *The National* program originally broadcast on September 23, 2016, featuring commentary by Rex Murphy. CBC owns the copyright in this material.

21. The CBC/Radio-Canada logo and graphics are visible throughout the CBC Material described at paragraphs 20(b) and (c) above. The CBC Material described at paragraphs 20(a) and (d) above (taken from *The National* program) are readily recognizable to viewers or listeners as CBC programming, despite the fact that the CBC/Radio-Canada logo does not appear in them.

22. The CBC Material captures the skill and judgment of CBC journalists and producers.

23. The CBC Material is copyright-protected and the applicants CBC/Radio-Canada own the copyright.

24. The “Look at What We’ve Done” video was removed from the Not as Advertised Page, the Facebook Page and the YouTube Page on or about October 10, 2019.

Respondents use CBC Material on Twitter

25. The Conservative Party operates a Twitter page found at https://twitter.com/CPC_HQ and under the handle @CPC_HQ (“Twitter Page”). The Twitter Page indicates that it belongs to “Canada’s Official Opposition, led by @AndrewScheer”.

26. The Conservative Party also operates a French language version of the Twitter Page, found at https://twitter.com/PCC_HQ and under the handle @PCC_HQ (“French Twitter Page”).

27. Over the course of October 7 and 8, 2019, the Conservative Party published a series of tweets on the Twitter Page and French Twitter Page that included video excerpts from the English-language Federal Leaders’ Debate (“Leaders’ Debate”), an event that occurred in connection with the 2019 Federal election and was broadcast by CBC earlier that same evening (“Debate Material”). In particular:

(a) On or about October 7, 2019, the Conservative Party published a tweet on the Twitter Page, which includes a 0:42 minute video excerpt from

the Leaders' Debate. The tweet was available at: https://twitter.com/CPC_HQ/status/1181359341485662208. The video excerpt consists of statements made by the Conservative Party leader, Andrew Scheer. The tweet contains the introductory text: "Let's. #cdnpoliVOTE #elxn43VOTE", made in response to a tweet by Liberal party leader Justin Trudeau prior to the Leaders' Debate that states, in part, "Round two. Let's go."

- (b) On or about October 7, 2019, the Conservative Party published a tweet on the Twitter Page, which includes a 0:21 minute excerpt from the Leaders' Debate. The tweet was available at: https://twitter.com/CPC_HQ/status/1181367217277083648. The excerpt consists of statements made by the Conservative Party leader, Andrew Scheer, NDP leader Jagmeet Singh and debate moderator Susan Delacourt. The tweet contains the introductory text: "Trudeau. #NotAsAdvertised".
- (c) On or about October 7, 2019, the Conservative Party published a tweet on the French Twitter Page, which includes a 0:21 minute excerpt from the Leaders' Debate. The tweet was available at: https://twitter.com/PCC_HQ/status/1181367207168745473. The excerpt consists of statements made by the Conservative Party leader, Andrew Scheer, NDP leader Jagmeet Singh and debate moderator Susan Delacourt. The tweet contains the introductory text: "Trudeau. #PasCeluiQuilPrétendaitÊtre".\

(d) On or about October 8, 2019, the Conservative Party published a tweet on the Twitter Page, which includes a 0:14 minute excerpt from the Leaders' Debate. The tweet was available at: https://twitter.com/CPC_HQ/status/1181572015972589568. The excerpt consists of statements made by the Conservative Party leader, Andrew Scheer, and Liberal leader Justin Trudeau. The video contains the "CBC News Network" logo, as well as banner text above and below the video reading: "Trudeau continues to lie to Canadians about breaking the law. Share this video." The tweet contains the following introductory text:

Trudeau continues to lie about the SNC-Lavalin corruption scandal. He still claims the whole thing is false, even after he was investigated and found to have broken the law. Last night Trudeau unrepentantly lied to Canadians all over again. He's not fit to lead. #cdnpoliVOTE #elxn43VOTE

28. As a member of the Canadian Debate Production Partnership (together with a number of other media organizations), CBC/Radio-Canada participated in moderating, producing, broadcasting and organizing the Leaders' Debate.

29. The Debate Material captures the skill and judgment of CBC's moderator (Rosemary Barton) and producers.

30. The Debate Material is copyright-protected and the applicants CBC/Radio-Canada own the copyright.

31. The tweets described above containing the Debate Material were removed from the Twitter Page and French Twitter Page on or about October 10, 2019.

Respondents' breach of CBC/Radio-Canada's copyright

32. The respondents' use of CBC/Radio-Canada copyright-protected material in the websites and tweets described above ("Infringing Material") was unauthorized and infringes CBC's copyright contrary to s. 3(1) of the *Copyright Act*, R.S.C. 1985, c. C-42, as amended.
33. The CBC Material and Debate Material copyright-protected material are original works of video and sound recording that capture the work of CBC/Radio-Canada journalists and producers. It is through the skill and judgment of CBC journalists and producers that the material has been created and made so attractive for the respondents to use for their own purposes.
34. Each video of the Infringing Material reproduced a substantial part of the CBC/Radio-Canada copyright-protected material that takes advantage of the skill and judgment of the CBC/Radio-Canada, its journalists and producers.
35. Such use by the respondents was for partisan and promotional ends and meets none of the purposes permitted under the *Copyright Act*. As such, it does not constitute fair dealing under the *Copyright Act*.
36. Nor does the respondents' use of CBC/Radio-Canada's copyright-protected material meet the requirement of fairness. The Infringing Material received wide distribution through the Internet. The excerpts of CBC/Radio-Canada copyright-protected material contained in the Infringing Material represent a qualitatively significant portion of each of the videos. The excerpts are taken

out of context and are edited and relied on to make partisan points for the benefit of the respondents.

37. There were alternatives available to the respondents that would avoid the infringement. For example, the respondents' websites could have published a hyperlink leading to the material on the CBC/Radio-Canada website. In the case of the Debate Material, the respondents could have posted either the entire debate, or debate segments (all responses to a particular question) that have been made available to all political parties.

38. The respondents may have published additional material that similarly infringes CBC/Radio-Canada's copyright. Full details of any such additional instances are within the knowledge of the respondents. CBC/Radio-Canada pleads that any further publication of similar material constitutes copyright infringement that entitles it to the remedies sought in this application.

The impact of the respondents' copyright infringement on CBC/Radio-Canada and its journalists

39. As with every other broadcaster governed by the *Broadcasting Act*, CBC/Radio-Canada is obligated to provide programing of "high standard", which includes fair and balanced reporting on matters of public interest.

40. To meet that requirement, CBC/Radio-Canada has enacted its own Journalistic Standards and Practices ("JSP"). The JSP states that during an election period, CBC/Radio-Canada's coverage will be fair and balanced "over the course of the campaign".

41. In addition, pursuant to regulations made under the *Broadcasting Act*, CBC/Radio-Canada is required to allocate time for programs of a partisan political character on an equitable basis to all political parties during an election period.
42. By using the CBC/Radio-Canada creative material as they have in the Infringing Material and including it in clearly partisan messages, the effect of the respondents' dealing with the CBC/Radio-Canada copyright-protected work is highly damaging to the CBC/Radio-Canada journalists and producers and to CBC/Radio-Canada itself.
43. The respondents' use of CBC/Radio-Canada's copyright-protected material in the Infringing Material diminishes the reputation of CBC/Radio-Canada, its journalists and producers, and takes advantage of their respected integrity and independence in a way that undermines public confidence in Canada's national public broadcaster at a critical time: during a national election campaign in which their coverage must be seen, more than ever, as trustworthy, independent and non-partisan.
44. Selectively editing various news items together to present a sensational and one-sided perspective against one particular political party may leave a viewer with the impression that CBC/Radio-Canada is biased, contrary to its obligations under the *Broadcasting Act*.

45. Furthermore, such usage of CBC/Radio-Canada work could leave the impression that CBC/Radio-Canada has improperly allocated its broadcast time in favour of certain political parties in violation of its legal obligations.
46. In the digital age, where trust in the media is constantly being attacked, and where credible news outlets are regularly accused of bias, this false impression among viewers is particularly damaging to CBC/Radio-Canada's reputation as a trusted source of news, and as Canada's public broadcaster.
47. The respondents' actions interfere with CBC/Radio-Canada's ability to fulfill its mandate to inform and enlighten under the *Broadcasting Act*, by diminishing the public's perception of CBC/Radio-Canada and its journalists and producers as reliable and independent sources for news and information.
48. The independence enjoyed by CBC/Radio-Canada in the pursuit of its statutory mandate is of such importance that it is specifically mentioned on four different occasions in the *Broadcasting Act*.

Respondents' breach of the applicants' moral rights

49. The Infringing Materials have also violated the moral rights of the affected journalists and producers and CBC/Radio-Canada, as authors and performers of the copyright-protected works.
50. By taking excerpts out of context, selectively editing them and inserting them into the respondents' highly partisan messages, the Infringing Materials have

interfered with the integrity of the applicants' interviews and reports of which they are the authors and performers.

51. Through the Infringing Materials, the respondents have damaged the reputations of the applicants as independent, non-partisan journalists by associating them with partisan causes, exploiting them and their work for the respondents' own political objectives.
52. Further, selectively editing various news items together to present a sensational and one-sided perspective against one particular political party may leave a viewer with the impression that the journalists are themselves biased, contrary to their obligations to be "fair and balanced".
53. It is critical to the applicants that the Canadian public perceive them as independent and non-partisan, so that they can be trusted to provide accurate and unbiased information on matters of public interest. This is at the heart of their mandate and journalistic work. Audience members, guest interviewees and the subjects of their reporting will be concerned if they perceive that this reputation is unfounded. By usurping the applicants' trust and hard-won reputation for their own partisan purposes, the respondents have put these at risk and harmed the applicants' reputations.

Respondents' Repeated and Improper Conduct

54. The respondents have intentionally and knowingly sought to maximize their improper use of the Infringing Material.

55. Their conduct demonstrates their intentional disregard of their statutory obligations under the *Copyright Act*.

56. CBC/Radio-Canada's Law Department sent demand letters on October 7, 2019 and October 8, 2019 in relation to the Infringing Material. Despite acknowledging receipt of the letters, the Respondents did not respond or otherwise act.

57. CBC's external counsel sent an additional demand letter on October 8, 2019 and also unequivocally advised the respondents that the applicants would seek injunctive relief on an urgent basis on October 10, 2019.

58. The respondents only removed the Infringing Material on or around 9am on October 10, 2019, clearly to maximize their use of the Infringing Material.

59. All political parties, including the Conservative Party of Canada, were specifically warned at the outset of the 2019 election campaign that use of CBC/Radio-Canada material would not be permitted.

60. In fact, the Conservative Party published a tweet on Twitter on September 10, 2019, which included footage taken from an interview conducted by CBC/Radio-Canada's Power and Politics on September 9, 2019.

61. CBC/Radio-Canada sent a cease and desist letter to the Communications Director for the Conservative Party on September 11, 2019.

62. After receiving no response to the letter of September 11, 2019, a follow-up cease and desist letter was sent on September 13, 2019.
63. The tweet was taken down shortly after receipt of the second letter.
64. In addition, the respondents acted in a similar fashion in the lead-up to the 2015 federal election.
65. On June 25, 2015, the Conservative Party and its agents published a 45-second video on the Conservative Party website, Facebook page and YouTube page entitled “Justin Trudeau on Isis”.
66. The video included multiple excerpts taken from a CBC/Radio-Canada Power and Politics program broadcast on June 23, 2015, in which the host, Terry Milewski, interviews Liberal Party of Canada leader Justin Trudeau.
67. On July 20, 2015, the Conservative Party published through its Twitter feed a 46-second video entitled “Where does Justin Trudeau stand on a pipeline that would bring Western Canadian oil to Eastern Canada?”
68. The sound in the video was almost entirely comprised of excerpts from a CBC Radio One (New Brunswick) interview by host Terry Seguin with Justin Trudeau.
69. The 2015 ads were only withdrawn immediately prior to service of CBC/Radio-Canada’s Notice of Application for injunctive relief on August 27, 2015.

70. The respondents' repeated improper conduct, coupled with the fact that federal elections occur at least every four years, militate in favour of a permanent injunction and determination of CBC/Radio-Canada's rights.

Remedies

71. In addition to declarations of infringement in order to vindicate the applicants' rights, a permanent injunction requiring the respondents to remove the Infringing Material from public view and restraining the respondents from further publishing or otherwise disseminating any other infringing material is an appropriate remedy to ensure the applicants' rights are not further infringed.

72. Sections 3(1), 14.1, 28.1, 29 and 34 of the *Copyright Act*, R.S.C. 1985, c. C-42;

73. Rules 300, 373 and 374 of the *Federal Court Rules*, SOR/98-106;

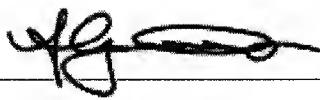
74. The *Broadcasting Act, 1991*, S.C. 1991, c 11;

75. Section 8 of the Television Broadcasting Regulations, 1987, SOR/87-49;

76. Such further and other grounds that counsel may advise and this Honourable Court may deem just.

This Application will be supported by the following material:

1. Affidavits to be sworn; and
2. Such further and other evidence that counsel may advise and this Honourable Court may permit.



October 10, 2019

STOCKWOODS LLP
Barristers
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Andrea Gonsalves (52532E)
Tel: 416-593-3497
andreag@stockwoods.ca

Justin Safayeni (58427U)
Tel: 416-593-3494
justins@stockwoods.ca

Tel: 416-593-7200
Fax: 416-593-9345

Lawyers for the Applicants

SOR/2004-283, ss. 35 and 38